

59851

November 21, 2017

To: Honorable Board of Acquisition and Contract

From: Vincent F. Kopicki, P.E.
Commissioner of Public Works and Transportation

Adam Rodriguez
Director of Real Estate

Re: Authority to enter into a Lease Agreement with Fareri Associates, LP pursuant to which the County of Westchester will lease a portion of real property located at the north portion of the Grasslands Reservation (also known as the Valhalla Campus at Grasslands) in the Valhalla section of the Town of Mt. Pleasant, New York, and commonly referred to as the "North 60" (the "Property") for a period of ninety-nine (99) years commencing upon execution.
(Lease Agreement No. 17-927)

On March 1, 2012, the County issued a Request for Qualifications and Expressions of Interest ("RFQ") to undertake the development of the Property. The ultimate goal of the RFQ was to select an entity that would create a research and development complex in support of the County's growing medical and biotech industry, as well as address community goals by providing a development that would reinforce the positive character of the adjacent facilities and neighborhoods, provide public access linked to surrounding amenities, and generate quality jobs and other economic benefits for the local community and other parts of Westchester County. While two proposals were received by the County, only the one submitted by Fareri was responsive.

On April 3, 2017, the Westchester County Board of Legislators adopted Local Law No. 6-2017 and Local Law No. 7-2017, which collectively authorize the County of Westchester (the "County") to enter into a ninety-nine (99) year lease agreement ("Lease Agreement") with Fareri Associates, LP its successors or assigns ("Fareri"), pursuant to which the County will lease the Property to Fareri for the creation of a research and development complex in support of the County's growing medical and bio-tech industry (the "Project"). Authority is respectfully requested to enter into the proposed Lease Agreement as further described below.

PROPOSED LEASE TERMS:

Rent and Term:

Pursuant to the proposed Lease Agreement, Fareri, commencing upon execution of the Lease Agreement, shall pay the County an annual minimum rent in the amount of \$125,000.00. Thereafter, upon the earlier of the date the first subtenant takes occupancy and begins paying rent, or six (6) months after the date the first subtenant takes occupancy, Fareri shall pay the County, in monthly installments, annual percentage rent as follows: six percent (6%) of gross rental income from the Permitted Uses (as defined in §5.1 of the proposed Lease Agreement), and three percent (3%) of gross rental income from a hotel or assisted living facility should such a facility be permitted (see §5.1 of the proposed Lease Agreement and the use restrictions of §39.0 of the Restated and Amended Lease Agreement ("Restated Lease") with the Westchester County Health Care Corporation ("WCHCC") discussed below).

Construction of the Project:

The Project will be developed and constructed over time in multiple phases. The "First Phase" means the construction of approximately 500,000 gross square feet of development consisting of the following uses, together with all other infrastructure and project improvements servicing such building(s):

- (i) approximately 100,000 square feet of medical office space;
- (ii) a hotel containing approximately 120 rooms and conference facilities (size to be determined by the end user);
- (iii) approximately 80,000 square feet of retail space; and
- (iv) approximately 220,000 square feet of biotechnology/medical technology space, which use must be developed by Fareri pursuant to the requirements of the County's RFQ.

The proposed Lease Agreement provides that in the event that the First Phase of the Project is not substantially completed by the First Phase Completion Date, the time for completion may be extended by the parties, with the Director of Real Estate acting on behalf of the County, provided that the construction is being diligently prosecuted toward substantial completion. Fareri will thereafter construct up to an additional 2,500,000 gross square feet, in one or more phases. All construction will be undertaken in accordance with a master development plan, which Fareri is required to prepare and submit for the entirety of the project first to the County Commissioner of Public Works and Transportation ("DPWT Commissioner") for approval and then to the Town of Mt. Pleasant. Prior to seeking land use approvals, Fareri is required to submit a site development plan to the DPWT Commissioner for review and approval.

Fareri shall not commence construction of any future phase unless and until the 220,000 square feet of biotechnology/medical technology space has been substantially completed. The obligation to build this 220,000 square feet is a material condition of the proposed Lease Agreement.

Development Leases for Each Phase of the Project.

Each phase of the Project shall be the subject of a separate development lease. The parties shall (i) amend the Lease Agreement to sever the portion of the Property on which the First Phase or Future Phase of the Project is located from the remainder of the Property and release the related development site from the leasehold and (ii) simultaneously enter into a new, separate lease (a "Development Lease") for the related development site. It should be noted that the further approval of the Board of Legislators and Board of Acquisition and Contract to amend the Lease Agreement and enter into the Development Leases will not be required under §4.2.1(f) of the proposed Lease Agreement, as it will be a Lease obligation of the County.

ADDITIONAL CONDITIONS:

As your Honorable Board will recall, on December 30, 1998, the County and WCHCC entered into the Restated Lease, affecting, among other things, the Grasslands Reservation. Pursuant to Article XX, Section 20.2(a) of the Restated Lease, the WCHCC is vested with a right of first refusal in connection with the sale, lease, license or commercial arrangement of all or any portion of the Grasslands Reservation which is not included within the premises leased to WCHCC, for which the County receives a bona fide written offer that the County desires to accept. The Property is subject to this provision. In accordance with Article XX of the Restated Lease, the proposed Lease Agreement was transmitted to WCHCC for its consideration and on May 4, 2017 the WCHCC elected not to exercise its right of first refusal.

In addition to this right of first refusal, WCHCC is also vested with a right against competition. Article XXXIX, Section 39.0 of the Restated Lease provides that the County, as WCHCC's landlord, will not lease, license, use or permit to be used by anyone other than WCHCC, as tenant, or a tenant under an Individual Lease or Single Lease (as those terms are defined in the Restated Lease), certain identified property, which is inclusive of the subject Property, for the provision of any medical or health related services, including, but not limited to senior housing, assisted living housing, and such other uses for which all or any portion of the premises leased to WCHCC are then being used by WCHCC, or a tenant under an Individual Lease or Single Lease. Accordingly, as the project progresses, additional approvals from WCHCC concerning its restrictive covenant rights under Section 39.0 of the Restated Lease will be required. In the event this occurs, the County shall work with Fareri to submit appropriate documentation to WCHCC seeking to obtain such approvals. Fareri shall not be permitted to use the Property for any use(s) prohibited by Section 39.0 of the Restated Lease until after either: a) WCHCC irrevocably waives, in writing, the restrictions on use of the Property as contained in the Restated Lease; or b) WCHCC and the County, subject to all necessary legal approvals, agree in the form of a written amendment to the Restated Lease to allow such prohibited use(s). The phrase "irrevocably waives such restrictions in writing" shall mean a writing signed by an officer of WCHCC who has been duly authorized by WCHCC to execute such a document on behalf of WCHCC.

Based upon the foregoing, approval of the attached resolution is respectfully requested.

VEK/AR/TSA
Attachment

RESOLUTION

Lease Agreement No. 17-927

Upon a communication from the Commissioner of the Department of Public Works and Transportation and the Director of Real Estate, be it hereby

RESOLVED, that in accordance with Local Law No. 6-2017 and Local Law No. 7-2017 duly adopted on April 3, 2017 by the Westchester County Board of Legislators, the County of Westchester (the "County") is authorized to enter into a lease agreement ("Lease Agreement") with Fareri Associates, LP its successors or assigns ("Fareri"), pursuant to which the County will lease a portion of real property located at the north portion of the Grasslands Reservation (also known as the Valhalla Campus at Grasslands) in the Valhalla section of the Town of Mt. Pleasant, New York, and commonly referred to as the "North 60" (the "Property"), for the creation of a research and development complex in support of the County's growing medical and bio-tech industry ("the Project"); and be it further

RESOLVED, that the Lease Agreement shall be for a term of ninety-nine (99) years commencing upon execution, and Fareri shall pay the County an annual minimum rent in the amount of \$125,000.00. Thereafter, upon the earlier of the date the first subtenant takes occupancy and begins paying rent, or six (6) months after the date the first subtenant takes occupancy, Fareri shall pay the County, in monthly installments, annual percentage rent as follows: six percent (6%) of gross rental income from the Permitted Uses (as defined in §5.1 of the proposed Lease Agreement), and three percent (3%) of gross rental income from a hotel or assisted living facility should such a facility be permitted (see §5.1 of the proposed Lease Agreement and the use restrictions of §39.0 of the Restated and Amended Lease Agreement with the Westchester County Health Care Corporation ("WCHCC") discussed below); and be it further

RESOLVED, that the Project will be developed and constructed over time in multiple phases. The "First Phase" means the construction of approximately 500,000 gross square feet of development consisting of the following uses, together with all other infrastructure and project improvements servicing such building(s):

- (i) approximately 100,000 square feet of medical office space;
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- (iv) approximately 220,000 square feet of biotechnology/medical technology space, which use must be developed by Fareri pursuant to the requirements of the County's RFQ.

The proposed Lease Agreement provides that in the event that the First Phase of the Project is not substantially completed by the First Phase Completion Date, the time for completion may be extended by the parties, with the Director of Real Estate acting on behalf of the County, provided that the construction is being diligently prosecuted toward substantial completion. Fareri will thereafter construct up to an additional 2,500,000 gross square feet, in one or more phases. All construction will be undertaken in accordance with a master development plan, which Fareri is required to prepare and submit for the entirety of the project first to the County Commissioner of Public Works and Transportation ("DPWT Commissioner") for approval and then to the Town of Mt. Pleasant. Prior to seeking land use approvals, Fareri is required to submit a site development plan to the DPWT Commissioner for review and approval.

Fareri shall not commence construction of any future phase unless and until the 220,000 square feet of biotechnology/medical technology space has been substantially completed. The obligation to build this 220,000 square feet is a material condition of the proposed Lease Agreement; and be it further

RESOLUTION

RESOLVED, that each phase of the Project shall be the subject of a separate development lease. The parties shall (i) amend the Lease Agreement to sever the portion of the Property on which the First Phase or Future Phase of the Project is located from the remainder of the Property and release the related development site from the leasehold and (ii) simultaneously enter into a new, separate lease (a "Development Lease") for the related development site. It should be noted that the further approval of the Board of Legislators and Board of Acquisition and Contract to amend the Lease Agreement and enter into the Development Leases will not be required under §4.2.1(f) of the proposed Lease Agreement, as it will be a Lease obligation of the County; and be it further

RESOLVED, that the County Executive or his authorized designee is authorized and empowered to execute and deliver all instruments and take all actions necessary or appropriate to effectuate the purposes hereof.

Lease Agreement No. 17-927

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	46	3400	9295		\$125,000.00 minimum (2017)
	101	46	3400	9295		\$125,000.00 minimum (2018)
	101	46	3400	9295		\$125,000.00 minimum (2019)
	101	46	3400	9295		\$125,000.00 minimum (2020-2116)

Budget Funding Year(s) 2017-2116 Start Date upon execution End Date 99 years
 (must match resolution)

Funding Source: Tax Dollars _____
 State Aid _____
\$125,000.00 minimum Federal Aid _____
 (must match resolution) Other Revenue _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/30/2017 LSA MRIM SECRETARY